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# **Committee on Utilities & Telecommunications**

**Thursday, March 23, 2006  
2:30 p.m. – 5:30 p.m.  
404 HOB**



# Florida House of Representatives

Commerce Council  
Utilities & Telecommunications Committee

**Kenneth W. "Ken" Littlefield**  
Committee Chairman

**Bob "Coach" Henriquez**  
Committee Vice-Chairman

## Agenda

Utilities and Telecommunications Committee  
March 23, 2006 2:30 p.m. – 5:30 p.m. 404 HOB

- I. Welcome and Opening Remarks by the Chairman
- II. Roll Call
- III. HB 701 – Alternative Energy / Justice
- IV. HB 817 – Telecommunications Carriers of Last Resort / Murzin
- V. HB 871 – Telephone Calling Records / Ryan
- VI. Workshop: HB 1199 – Statewide Cable Television Franchises / Traviesa
- VII. Closing Remarks by the Chairman
- VIII. Adjourn



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0701

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Utilities &  
Telecommunications Committee  
Representative Justice offered the following:

**Amendment**

Remove line 127 and insert:

(b) The President of Enterprise Florida, Inc., or his or  
her designee.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0701

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Council/Committee hearing bill: Utilities &  
2 Telecommunications Committee  
3 Representative Justice offered the following:  
4

5 **Amendment**

6 Remove lines 239 through 243  
7

8 (and renumber subsequent subsections)

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 701

Alternative Energy

SPONSOR(S): Justice

TIED BILLS:

IDEN./SIM. BILLS: SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater <i>SK</i>	Holt <i>ugh</i>
2) Environmental Regulation Committee			
3) Transportation & Economic Development Appropriations Committee			
4) Commerce Council			
5) _____			

### SUMMARY ANALYSIS

The bill establishes the Florida Renewable Energy Center, Inc., (Center) as a not-for-profit corporation, to be the principal alternative energy technology organization for the state. Its primary functions are to provide leadership for research, development, and deployment of alternative energy technologies. These functions are to be accomplished through collaborative efforts with state universities, the private sector, and the Department of Environmental Protection (DEP). A goal for the Center is to develop and make recommendations to the Legislature, Governor, and state agencies for alternative energy policies.

The Center shall be governed by a board of directors, and the bill outlines the appointment process. Also, the bill includes the powers and functions of the board of directors

The bill provides for an appropriation of \$500,000 from the General Revenue Fund to the Executive Office of the Governor to fund the activities of the Center.

Further, provisions are included in the bill that provide for a contractual agreement between the Center and the Public Service Commission (PSC) to distribute funds from the Florida Electric Energy Trust Fund. However, there is no specific authority in the bill creating the Florida Electric Energy Trust Fund.

This act shall take effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill establishes the Florida Alternative Energy Technology Center as a not-for-profit corporation to be the principal alternative energy technology organization for the state.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The Department of Environmental Protection (DEP) operates the Florida Energy Office, which is the state's primary center for developing and implementing energy policy and coordinates all federal energy programs delegated to the state, including energy supply, demand, conservation, and allocation.

Research on renewable energy resources, energy conservation, and other alternative energy sources is conducted by state universities, the Florida Solar Energy Center, and through grants from the DEP's Florida Energy Office.

##### Proposed Changes

The bill provides legislative findings that it is in the public interest to promote, conduct research on, and use renewable energy resources, energy conservation, distributed generation, advanced transmission methods, and pollution control. It also finds that Florida and the United States are overly dependent of fossil fuels to meet our energy needs, and that renewable energy and conservation resources has the potential to decrease our dependence on fossil fuels, minimize volatility in fuel costs, and improve environmental conditions. The bill also finds that distributed energy resources and enhancements to electric transmissions can potentially may the electricity supply more secure and decrease the likelihood and severity of blackouts. Additionally, research can make the state a leader in new and innovative technologies and encourage investment and economic development.

The bill defines "alternative energy technology" to include, but not limited to: hydrogen fuel, fuel cells, distributed generation, biodiesel and similar synthetic fuels, thermo-depolymerization, biomass, agricultural products and byproducts, municipal solid waste (including landfill injection, landfill mining, landfill gas), solar thermal and solar photovoltaic energy, ocean energy (including wave or thermal), energy conservation (including building, equipment, and appliance efficiency technologies), enhancements to the transmission of electricity (including advanced transmission lines), and environmental standards.

The bill creates the Center as a not-for-profit corporation, which must be registered, incorporated, organized, and operated in compliance with ch. 617, F.S. While the Center is not to be a unit or entity of state government, the Legislature determines that public policy dictates that it operate in an open and accessible manner. The Legislature declares that its board of director, tasks forces, advisory committees and similar advisory groups are subject to the public records provisions of ch. 119, F.S., and to the provisions of ch. 286, F.S. relating to public meetings and records.

The Center is to be the principal alternative energy technology organization for the state and is to provide leadership for research, development, and deployment of alternative energy technology in Florida. It is created as a not-for-profit corporation, and it is to have the following duties:

- Establish a unified approach to research, development, and deployment of alternative energy technology, with the cooperation of the Governor, the Legislature, the DEP, the Statewide Board of Governors of the State University System, the Public Service Commission (PSC), and

relevant businesses in the private sector. The approach must supplement and may not displace the energy initiatives of the DEP;

- Assist the state universities and the private sector in determining areas on which to focus research in alternative energy technology and to assist in coordinating research projects among the universities and relevant private-sector entities;
- Assist the DEP and the private sector in determining the areas on which to focus alternative energy development or deployment projects;
- Promote the state as a location for businesses having operations related to alternative energy technologies in cooperation with Enterprise Florida, Inc., and the DEP;
- Assist universities, other state entities, and private companies in raising funds from all available public or private-sector sources for alternative energy technology projects;
- Collect and maintain information relating to: funding sources; alternative energy technology research, development, or deployment projects; and alternative energy technology businesses considering operations in Florida;
- Make policy recommendations to the Legislature, Governor, and state agencies and subdivisions.

Additionally, the Center may conduct research when the particular research is not or cannot be done by a state university or the DEP, and the Center may only conduct such projects using its own personnel and facilities, or in cooperation with universities, DEP, and/or private companies.

In performing these duties, the Center is required to ensure maximum benefit to the state and is required to act in the best interest of the state. As part thereof, the Center shall establish strategic priorities consistent with certain findings to guide funding allocations and ensure the best use of available resources.

The Center must establish one or more corporate offices, one of which must be located in Leon County.

The Center's board of directors includes the following members:

- A representative from the DEP;
- The President of Enterprise Florida, Inc., or his or her designee;
- A representative from the State Board of Education, selected by the members of that board;
- A representative selected by the Florida investor-owned electric utilities with a term of two years;
- A representative selected by the Florida municipal electric utilities and rural electric cooperatives with a term of two years;
- A representative selected by the President of the Senate who is a board member or executive officer of a business that is located in Florida and that does not have any business interests relating to energy who can provide guidance as to locating and operating a business in this state with a term of two years;
- A representative selected by the Speaker of the House of Representatives who is a board member or executive officer of a business that is located in Florida and that does not have any business interests relating to energy who can provide guidance as to locating and operating a business in this state with a term of two years;
- A representative selected by the Governor from an environmental group who is informed about energy matters of the state with a term of two years.

When a board member's term has expired, a new member must be selected by the group that originally appointed the member. Vacancies on the board must be filled in the same manner as the original appointment. Vacancies shall be filled for the remainder of the unexpired term, where applicable.

The board must select a chairperson biennially, upon appointment of all new members. Also, the board must meet at least four times each year, upon the call of the chairperson, or at the request of a majority



of the membership. A majority of the total number of directors constitutes a quorum, and the board may take official action by majority vote of the members present.

Members of the board serve without compensation, but members, the president, and staff may be reimbursed for all reasonable, necessary, and actual expenses. Each member of the board who is not otherwise required to file a financial disclosure statement must file such a disclosure statement as required pursuant to Section 112.3145, F.S.

The powers and duties of the board, including the following, are specified:

- Ability to enter into contracts;
- Sue and be sued;
- Adopt, use, and alter a corporate seal;
- Election or appointment of officers and agents and allow them reasonable compensation;
- Establish bylaws;
- Use of patents, copyrights, and trademarks;
- Use of state seal;
- Invest unspent funds;
- Procure insurance or required bonds;
- Create and dissolve advisory committees, task forces, or similar working groups;
- Solicit input from the public.

The bill provides that these powers should be liberally construed so that the Center may pursue its purpose.

The board of directors must appoint a corporate president and establish and adjust the president's compensation. The president serves as the chief administrative and operational officer of the board and of the corporation, and directs and supervises the administrative affairs of the board and each working group created by the board.

The bill requires distributions to be made to the corporation from the Florida Electric Energy Trust Fund under contract between the PSC and the corporation, including any funding directed by the Legislature. The Florida Electric Energy Trust Fund does not exist. It is also not clear, based on this language, what the PSC's role will be in this corporation.

The corporation's board of directors and officers are responsible for the prudent use of all funds the corporation controls and must ensure that such funds are used in accordance with applicable laws, bylaws, and contractual requirements. Employees of the corporation may not receive compensation which exceeds the salary of the Governor, unless the board and the employee have executed a contract that prescribes specific, measurable performance outcomes, the satisfaction of which provides the basis for incentive payments that increase the employee's total compensation to a level above the salary paid to the government.

The credit of the state may not be pledged on behalf of the corporation.

In addition to any indemnification available under ch. 617, F.S., the corporation may indemnify, and purchase and maintain insurance on behalf of its directors, officers, employees, or working-group members against personal liability or accountability for actions taken within the scope of their employment or authority.

By December 1 of each year, the corporation must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairman of the State Board of Education. The report must include a description of the Center's activities and accomplishments; an annual financial accounting by an independent certified public accountant; a statement of its strategic priorities and their use in guiding resource allocations; and any

recommendations the Center has for action by the Legislature or by the agencies of state, county or municipal governments to foster development or use of alternative energy technology.

The bill appropriates \$500,000 from the General Revenue Fund to the Executive Office of the Governor for funding the activities of the Florida Alternative Energy Technology Center, Inc., for the 2005-2006 fiscal year.

This act shall take effect upon becoming law.

**C. SECTION DIRECTORY:**

Section 1      Creates the Florida Alternative Energy Technology Center, Inc.

Section 2      Provides for an appropriation of \$500,000 for the 2005-2006 fiscal year.

Section 3      This act shall take effect upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

The bill appropriates \$500,000 from the General Revenue Fund to the Executive Office of the Governor to fund the activities of the Florida Alternative Energy Technology Center.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

On lines 239 through 243, the bill provides for a contractual agreement between the Center and the Public Service Commission (PSC) to distribute funds from the Florida Electric Energy Trust Fund. However, there is no specific authority in the bill creating the Florida Electric Energy Trust Fund.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

On lines 239 through 243, the bill provides for a contractual agreement between the Center and the Public Service Commission (PSC) to distribute funds from the Florida Electric Energy Trust Fund. However, there is no specific authority in the bill creating the Florida Electric Energy Trust Fund. In order to establish this fund as a new trust fund, Article III Section 19 of the state constitution provides that a separate bill is required to establish a new trust fund.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear of the exact role of the PSC. It may be helpful to clarify that the PSC's role is limited to that of transferring any funds deposited in the trust fund to the corporation.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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1 A bill to be entitled

2 An act relating to alternative energy; providing  
3 legislative findings; providing definitions; creating the  
4 Florida Alternative Energy Technology Center, Inc., as a  
5 not-for-profit corporation; requiring compliance with  
6 public meetings and records laws; providing for the  
7 organization, purpose, and duties of the center; providing  
8 for the membership on the board of directors of the  
9 center; requiring the disclosure of financial interests by  
10 board members; specifying the powers and duties of the  
11 board; requiring an annual report; providing an  
12 appropriation; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Florida Alternative Energy Technology Center,  
17 Inc.; findings; creation; membership; organization; purpose;  
18 duties; powers.--

19 (1) The Legislature finds that it is in the public  
20 interest to promote research on and use of renewable energy  
21 resources, energy conservation, distributed generation, advanced  
22 transmission methods, and pollution control. Both Florida and  
23 the United States in general are overly dependent on fossil  
24 fuels to meet the energy needs of homes and businesses.  
25 Renewable energy resources and energy conservation resources  
26 have the potential to decrease this dependency, minimize  
27 volatility of fuel cost, and improve environmental conditions.  
28 Distributed energy resources and enhancements to the

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29 transmission of electricity have the potential to make our  
30 supply of electricity more secure and to decrease the likelihood  
31 and severity of blackouts. Research in this state on these  
32 subjects can make the state a leader in new and innovative  
33 technologies and encourage investment and economic development  
34 in this state.

35 (2) As used in this section, the term:

36 (a) "Corporation" means the Florida Alternative Energy  
37 Technology Center, Inc.

38 (b) "Alternative energy technology" means energy  
39 technologies that are undeveloped or less than established in  
40 current markets. The term includes, but is not limited to,  
41 hydrogen fuel; fuel cells; distributed generation; biodiesel and  
42 similar synthetic fuels; thermo-depolymerization; biomass;  
43 agricultural products and byproducts; municipal solid waste,  
44 including landfill injection, landfill mining, and landfill gas;  
45 solar thermal and solar photovoltaic energy; ocean energy,  
46 including wave or thermal; energy conservation, including  
47 building, equipment, and appliance efficiency technologies;  
48 enhancements to the transmission of electricity, including  
49 advanced transmission lines; and environmental standards.

50 (3) There is created a not-for-profit corporation, to be  
51 known as the Florida Alternative Energy Technology Center, Inc.,  
52 which must be registered, incorporated, organized, and operated  
53 in compliance with chapter 617, Florida Statutes, and which is  
54 not to be a unit or entity of state government. The Legislature  
55 determines, however, that public policy dictates that the  
56 corporation operate in the most open and accessible manner

57 consistent with its public purpose. To this end, the Legislature  
58 specifically declares that the corporation and its board of  
59 directors and the task forces, advisory committees, and similar  
60 working groups that the corporation creates are subject to the  
61 provisions of chapter 119, Florida Statutes, relating to public  
62 records and the provisions of chapter 286, Florida Statutes,  
63 relating to public meetings and records.

64 (4) The corporation is the principal alternative energy  
65 technology organization for the state and shall provide  
66 leadership for research, development, and deployment of  
67 alternative energy technology in this state, including  
68 production of, improvements in, and the use of such technology.  
69 In fulfilling this responsibility, the corporation shall:

70 (a) Establish a unified approach to research, development,  
71 and the deployment of alternative energy technology, with the  
72 cooperation of the Governor, the Legislature, the Department of  
73 Environmental Protection, the Statewide Board of Governors of  
74 the State University System, the Public Service Commission, and  
75 relevant private-sector entities. The approach established must  
76 supplement and not displace the energy initiatives of the  
77 Department of Environmental Protection.

78 (b) Assist the state universities and the private sector  
79 in determining the areas on which to focus research in  
80 alternative energy technology and to assist in coordinating  
81 research projects among the universities and relevant private-  
82 sector entities.

83 (c) Assist the Department of Environmental Protection and  
84 the private sector in determining the areas on which to focus

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85 alternative-energy-technology development or deployment projects  
86 and in coordinating such projects among relevant public and  
87 private-sector entities.

88 (d) Promote the state as a location for businesses having  
89 operations related to alternative energy technologies in  
90 cooperation with Enterprise Florida, Inc., and the Department of  
91 Environmental Protection.

92 (e) Assist universities, other state entities, and  
93 private-sector entities in raising funds from all available  
94 public or private-sector sources for projects concerning  
95 research, development, or deployment of alternative energy  
96 technology, including projects that involve the production of,  
97 improvements in, or use of alternative energy technology in this  
98 state.

99 (f) Collect and maintain information relating to sources  
100 of funding for its work; alternative-energy-technology research,  
101 development, or deployment projects that are or have been  
102 conducted or that are needed; and alternative-energy-technology  
103 businesses that are considering operations in this state.

104 (g) Make policy recommendations to the Legislature, the  
105 Governor, and state agencies and subdivisions.

106 (5) The corporation may conduct projects concerning  
107 research, development, or deployment of alternative energy  
108 technology that are not or cannot be conducted by a state  
109 university or the Department of Environmental Protection. The  
110 corporation may conduct such projects using only its own  
111 personnel and facilities, or in cooperation with one or more  
112 universities, one or more private-sector entities, the

113 Department of Environmental Protection, or any combination of  
114 such potential cooperating entities.

115 (6) In performing its functions, the corporation shall  
116 take all possible steps to ensure the maximum benefit to the  
117 state. As part thereof, the corporation shall establish  
118 strategic priorities, consistent with the findings of this  
119 section, to guide funding allocations and ensure the best use of  
120 available resources.

121 (7) The corporation must establish one or more corporate  
122 offices, at least one of which must be located in Leon County.

123 (8) The corporation shall be governed by a board of  
124 directors consisting of the following members:

125 (a) A representative from the Department of Environmental  
126 Protection.

127 (b) The President of Enterprise Florida, Inc.

128 (c) A representative from the State Board of Education,  
129 selected by the members of that board.

130 (d) A representative selected by the public utilities, as  
131 that term is defined in s. 366.02, Florida Statutes. The term  
132 for this board member shall be 2 years, with a new  
133 representative selected at the end of that time.

134 (e) A representative selected by the Florida municipal  
135 electric utilities and rural electric cooperatives. The term for  
136 this board member shall be 2 years, with a new representative  
137 selected at the end of that time.

138 (f) A representative, selected by the President of the  
139 Senate, who is a board member or executive officer of a business  
140 that is located in this state, who has no business interests



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141 relating to energy, and who can provide guidance as to locating  
142 and operating a business in this state. The term for this board  
143 member shall be 2 years, with a new representative selected at  
144 the end of that time.

145 (g) A representative, selected by the Speaker of the House  
146 of Representatives, who is a board member or executive officer  
147 of a business that is located in this state, who has no business  
148 interests relating to energy, and who can provide guidance as to  
149 locating and operating a business in this state. The term for  
150 this board member shall be 2 years, with a new representative  
151 selected at the end of that time.

152 (h) A representative, selected by the Governor, who is  
153 from an environmental group that is informed about energy  
154 matters of this state. The term for this board member shall be 2  
155 years, with a new representative selected at the end of that  
156 time.

157 (9) Vacancies on the board of directors of the corporation  
158 must be filled in the same manner as the original appointment.  
159 Vacancies shall be filled for the remainder of the unexpired  
160 term, where applicable.

161 (10) The members of the board of directors of the  
162 corporation must select a chair biennially, upon appointment of  
163 all new members.

164 (11) The board of directors of the corporation must meet  
165 at least four times each year, upon the call of the chair, or at  
166 the request of a majority of the membership. A majority of the  
167 total number of all directors constitutes a quorum. The board  
168 may take official action by a majority vote of the members

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169 present at any meeting at which a quorum is present.

170       (12) Members of the board of directors of the corporation  
 171 shall serve without compensation, but members, the president,  
 172 and staff may be reimbursed for all reasonable, necessary, and  
 173 actual expenses, as determined by the board.

174       (13) Each member of the board of directors of the  
 175 corporation who is not otherwise required to file a financial  
 176 disclosure pursuant to Section 8, Article II of the State  
 177 Constitution or s. 112.3144, Florida Statutes, must file a  
 178 disclosure of financial interests pursuant to s. 112.3145,  
 179 Florida Statutes.

180       (14) The board of directors of the corporation may:

181       (a) Secure funding for programs and activities of the  
 182 corporation and its boards from public and private-sector  
 183 sources and from fees charged for services or published  
 184 materials, and solicit, receive, hold, invest, and administer  
 185 any grant, payment, or gift of funds or property and make  
 186 expenditures consistent with the powers granted to it.

187       (b) Make and enter into contracts and other instruments  
 188 necessary or convenient for the exercise of its powers and  
 189 functions.

190       (c) Sue and be sued, and appear and defend in all actions  
 191 and proceedings, in its corporate name to the same extent as a  
 192 natural person.

193       (d) Adopt, use, and alter a common corporate seal for the  
 194 corporation and its boards.

195       (e) Elect or appoint such officers and agents as its  
 196 affairs require and allow them reasonable compensation.

197        (f) Adopt, amend, and repeal bylaws, not inconsistent with  
198 the powers granted to it or the articles of incorporation, for  
199 the administration of the affairs of the corporation and the  
200 exercise of its corporate powers.

201        (g) Acquire, enjoy, use, and dispose of patents,  
202 copyrights, and trademarks and any licenses, royalties, and  
203 other rights or interests thereunder or therein.

204        (h) Do all acts and things necessary or convenient to  
205 carry out the powers granted to it.

206        (i) Use the state seal, notwithstanding the provisions of  
207 s. 15.03, Florida Statutes, when appropriate, to establish that  
208 the corporation is the principal alternative energy technology  
209 organization for the state, and for other standard corporate  
210 identity applications. Use of the state seal may not replace use  
211 of a corporate seal as provided in this subsection.

212        (j) Invest any funds unspent at the end of the fiscal year  
213 to maximize the use of those funds.

214        (k) Procure insurance or require bond against any loss in  
215 connection with the property of the corporation and its board of  
216 directors or working groups, in such amounts and from such  
217 insurers as is necessary or desirable.

218        (l) Create and dissolve advisory committees, task forces,  
219 or similar working groups as necessary to carry out the  
220 corporation's mission. Members of such groups shall serve  
221 without compensation but may be reimbursed for reasonable,  
222 necessary, and actual expenses, as determined by the  
223 corporation's board of directors.

224        (m) Solicit input from the public, organizations concerned

225 about energy in this state, and experts in the field.

226 (15) The powers granted to the corporation shall be  
227 liberally construed so that the corporation may aggressively  
228 pursue its purpose of being the principal alternative energy  
229 technology organization for the state.

230 (16) The corporation's board of directors must appoint a  
231 corporate president and establish and adjust the president's  
232 compensation. The president is the chief administrative and  
233 operational officer of the board of directors and of the  
234 corporation, and directs and supervises the administrative  
235 affairs of the board and each working group created by the  
236 board. The board of directors may delegate to its president  
237 those powers and responsibilities it deems appropriate, except  
238 for the appointment of a president.

239 (17) Distributions shall be made to the corporation from  
240 the Florida Electric Energy Trust Fund under a contract between  
241 the Public Service Commission and the corporation, including any  
242 funding that is directed by the Legislature to be paid to a  
243 specific recipient.

244 (18) The board of directors and officers of the  
245 corporation are responsible for the prudent use of all public  
246 and private funds that the corporation controls and must ensure  
247 that the use of such funds is in accordance with applicable  
248 laws, bylaws, and contractual requirements. An employee of the  
249 corporation may not receive compensation for employment which  
250 exceeds the salary paid to the Governor, unless the board of  
251 directors and the employee have executed a contract that  
252 prescribes specific, measurable performance outcomes for the

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employee, the satisfaction of which provides the basis for the  
award of incentive payments that increase the employee's total  
compensation to a level above the salary paid to the Governor.

(19) The credit of the State of Florida may not be pledged  
on behalf of the corporation.

(20) In addition to any indemnification available under  
chapter 617, Florida Statutes, the corporation may indemnify,  
and purchase and maintain insurance on behalf of, its directors,  
officers, employees, or working-group members against personal  
liability or accountability for actions taken within the scope  
of their employment or authority.

(21) By December 1 of each year, the corporation must  
submit an annual report to the Governor, the President of the  
Senate, the Speaker of the House of Representatives, and the  
chair of the State Board of Education containing:

(a) A detailed description of the corporation's activities  
and accomplishments for the year.

(b) An annual financial accounting of resources and  
expenditures prepared by an independent certified public  
accountant.

(c) A statement of the strategic priorities of the  
corporation and their use in guiding resource allocations.

(d) Any recommendations the corporation has for action by  
the Legislature or by the agencies of state, county, or  
municipal governments to foster research concerning, or  
development or deployment of, alternative energy technology.

Section 2. The sum of \$500,000 is appropriated from the  
General Revenue Fund to the Executive Office of the Governor for

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281   the purpose of funding the activities of the Florida Alternative  
282   Energy Technology Center, Inc., for the 2006-2007 fiscal year.

283       Section 3. This act shall take effect upon becoming a law.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0817

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Utilities & Telecommunications  
Committee

Representative(s) Murzin offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (6) is added to section 364.025,  
Florida Statutes, to read:

364.025 Universal service.--

(6) (a) For purposes of this subsection:

1. "Owner or developer" means the owner or developer of a  
multitenant business or residential property, any condominium  
association or homeowners' association thereof, or any other  
person or entity having ownership in or control over the  
property.

2. "Communications service provider" means any person or  
entity providing communications services, any person or entity  
allowing another person or entity to use its communications  
facilities to provide communications services, or any person or  
entity securing rights to select communications service  
providers for a property owner or developer.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22        3. "Communications service" means voice service or voice  
23 replacement service through the use of any technology.

24        (b) A local exchange telecommunications company obligated  
25 by this section to serve as the carrier of last resort is not  
26 obligated to provide basic local telecommunications service to  
27 any customers in a multitenant business or residential property,  
28 including, but not limited to, apartments, condominiums,  
29 subdivisions, office buildings, or office parks, when the owner  
30 or developer thereof:

31        1. Permits only one communications service provider to  
32 install its communications service-related facilities or  
33 equipment, to the exclusion of the local exchange  
34 telecommunications company, during the construction phase of the  
35 property;

36        2. Accepts or agrees to accept incentives or rewards from  
37 a communications service provider that are contingent upon the  
38 provision of any or all communications services by one or more  
39 communications service providers to the exclusion of the local  
40 exchange telecommunications company;

41        3. Collects from the occupants or residents of the  
42 property charges for the provision of any communications  
43 service, provided by a communications service provider other  
44 than the local exchange telecommunications company, to the  
45 occupants or residents in any manner, including, but not limited  
46 to, collection through rent, fees, or dues; or

47        4. Restricts or limits a local exchange telecommunications  
48 company's access to the property or enters into an agreement  
49 with a communications service provider that restricts or limits  
50 a local exchange telecommunications company's access to the  
51 property or that grants incentives or rewards to such owner or  
52 developer contingent upon such restriction or limitation.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

53        (c) The local exchange telecommunications company relieved  
54 of its carrier of last resort obligation to provide basic local  
55 telecommunications service to the occupants or residents of a  
56 multitenant business or residential property pursuant to  
57 paragraph (b) shall notify the commission of that fact in a  
58 timely manner.

59        (d) A local exchange telecommunications company that is  
60 not automatically relieved of its carrier-of-last-resort  
61 obligation pursuant to subparagraphs (b)1.-4. may seek a waiver  
62 of its carrier of last resort obligation from the commission for  
63 good cause shown based on the facts and circumstances of  
64 provision of service to the multitenant business or residential  
65 property. Upon petition for such relief, notice shall be given  
66 by the company at the same time to the relevant building owner  
67 or developer. The commission shall have 90 days to act on the  
68 petition. The commission shall implement this paragraph through  
69 rulemaking.

70        (e) If all conditions described in subparagraphs (b)1.-4.  
71 cease to exist at a property, the owner or developer requests in  
72 writing that the local exchange telecommunications company make  
73 service available to customers at the property and confirms in  
74 writing that all conditions described in subparagraphs (b)1.-4.  
75 have ceased to exist at the property, and the owner or developer  
76 has not arranged and does not intend to arrange with another  
77 communications service provider to make communications service  
78 available to customers at the property, then the carrier of last  
79 resort obligation under this section shall again apply to the  
80 local exchange telecommunications company at the property;  
81 however, the local exchange telecommunications company may  
82 require that the owner or developer pay to the company in  
83 advance a reasonable fee to recover costs that exceed the costs

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

that would have been incurred to construct or acquire facilities to serve customers at the property initially, and the company shall have a reasonable period of time following the request from the owner or developer to make arrangements for service availability. If any conditions described in subparagraphs (b)1.-4. again exist at the property, then subparagraph (b) shall again apply.

(f) Nothing in this subsection affects the limitations on commission jurisdiction imposed by s. 364.011 or s. 364.013.

Section 2. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to telecommunications carriers of last resort; amending s. 364.025, F.S.; providing definitions; providing that a local exchange telecommunications company obligated to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to customers in a multitenant business or residential property under certain circumstances; requiring the local exchange telecommunications company to notify the Public Service Commission when it is relieved of the obligation to provide service; providing for the local exchange telecommunications company to request a waiver of its carrier of last resort obligation from the commission; providing for carrier of last resort obligation to apply when specified conditions cease to exist; providing for effect of the act on the commission's jurisdiction; providing an effective date.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 817

Telecommunications Carriers of Last Resort

**SPONSOR(S):** Murzin

**TIED BILLS:**

**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Utilities &amp; Telecommunications Committee</u>		Cater <i>[Signature]</i>	Holt <i>[Signature]</i>
2) <u>Business Regulation Committee</u>			
3) <u>Civil Justice Committee</u>			
4) <u>Commerce Council</u>			
5) _____			

### SUMMARY ANALYSIS

Currently, s. 364.025(1), F.S., provides that, "[U]ntil January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.

HB 817 amends s. 364.025, F.S., to provide that an Eligible Telecommunications Carrier, with carrier-of-last resort (COLR) obligations, is relieved of providing basic local telecommunications service to business or residential multitenant buildings or developments, when circumstances exist that prevented or impeded it from connecting with the occupants. Federal law delegates to the states authority to define the term "eligible telecommunications carrier. In s. 364.10, F.S., the term "eligible telecommunications carrier" means a telecommunications company, as defined by s. 364.02, F.S.<sup>1</sup>, pursuant to 47 C.F.R. s. 54.201.

The bill also requires an ETC, with COLR obligations, to give timely notice to the PSC when circumstances exist that prevent or impede it from providing basic local exchange telecommunications service (basic service) to the occupants of multitenant building or development.

The bill does not have a fiscal impact on either state or local governments.

<sup>1</sup> "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

- (a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company;
- (b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
- (c) A commercial mobile radio service provider;
- (d) A facsimile transmission service;
- (e) A private computer data network company not offering service to the public for hire;
- (f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or
- (g) An intrastate interexchange telecommunications company.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government-**The bill provides an exemption to an Eligible Telecommunications Carrier, with carrier-of-last resort (COLR) obligations, when circumstances exist that prevented or impeded it from providing basic service to the occupants of a business or residential multitenant building or development.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Currently, s. 364.025(1), F.S., provides that, "[U]ntil January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service<sup>2</sup> within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies<sup>3</sup> have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.<sup>4</sup>

The current law does not provide for waiver of the COLR obligations. However, s. 364.01(4)(f), F.S., provides the PSC with authority to eliminate rules and regulations that delay or impair the transition to competition.

The local exchange telecommunications company's (LECs) carrier-of-last-resort (COLR) obligation in s. 364.025(1), F.S. is not tied to the eligible telecommunications carrier (ETC) status addressed in s. 364.10(2), F.S. Section 364.10(2) requires carriers with ETC status to also "provide a Lifeline Assistance Program to eligible residential subscribers."<sup>5</sup> While all LECs are currently ETCs; not all ETCs are LECs. Some competitive carriers have been given ETC status by the PSC and some wireless carriers have been issued ETC status in Florida by the Federal Communications Commission; however, these carriers do not have COLR obligations.

Local exchange telecommunications companies with COLR obligations have encountered situations in multitenant structures and developments that have prevented or impeded them from providing basic service to the occupants (end-use customers). Either before or after a LEC begins provisioning activities to serve these end-use customers, the property owner either enters into an exclusive arrangement with another carrier and prohibits the COLR from installing facilities and/or providing service, or the property owner enters into an agreement with another communications provider where the property owner collects money from the tenants to cover the cost of the alternative communications services. However, the LEC still has its COLR obligation; and when these situations have occurred, the LEC has notified the PSC of these "locked out" situations.

<sup>2</sup> Section 364.02(1), F.S., defines "basic local telecommunications service" as voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

<sup>3</sup> Section 364.02(8), F.S., defines "local exchange telecommunications company" as any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

<sup>4</sup> S. 25-4.066, F.A.C., Availability of Service.

<sup>5</sup> The Lifeline Assistance Program is a program to provide low-cost telephone service to low-income residential customers.

On December 16, 2005, BellSouth Telecommunications, Inc., a COLR, petitioned the PSC for Waiver of Rules 25-4.066 and 25-4.067, F.A.C. and Petition to Initiate Rulemaking (Petition). BellSouth seeks relief relate to service installation intervals and line extension cost recovery which have been established, in part, to implement its COLR obligation. BellSouth's rulemaking request is to permit a waiver of the rules relating only to multitenant establishments and subdivisions where owners or developers have sought to limit the ability of COLRs to serve the occupants of such locations. The PSC has not ruled on the Petition.

### **Proposed Changes**

HB 817 amends s. 364.025, F.S., to provide an exemption to Eligible Telecommunications Carriers, with carrier-of-last resort (COLR) obligations. The exemption relieves them of providing basic service only to business or residential multitenant buildings or developments, when circumstances exist that prevented or impeded them from connecting with the occupants. The bill provides definitions and establishes criteria under which the exemption is applicable.

The bill defines the following terms:

1. "owner or developer" as the owner or developer of a multitenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.
2. "communications service provider" includes any person or entity providing communications services or allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.
3. "communications service" as defined for this section and applied to multitenant business or residential properties, includes, but is not limited to voice telecommunications service or voice replacement service, VoIP, broadband service, data service, information service, and cable service. This definition is more expansive than the definition of "service" more generally applicable under ch. 364, F.S., which specifically excludes broadband and VoIP.<sup>6</sup>

Under the bill, criteria are established whereby an ETC, with COLR obligations, may be relieved of its obligations to provide basic service to any customers in a multitenant business or residential property (including, but not limited to, apartments, condominiums, subdivisions, office buildings or office parks), when the owner or developer:

- Permits only one communications service provider, not the ETC, to install its communications service-related facilities or equipment during the construction phase of the project;
- Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the ETC;
- Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the ETC, in any manner, including, but not limited to, collection through rent, fees, or dues;
- Restricts or limits an ETC's access to the property or enters into an agreement with a communications service provider that restricts or limits an ETC's access to the property or

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<sup>6</sup> See specifically s. 364.02(13), F.S.  
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grants incentives or rewards to such owner or developer contingent upon such restriction or limitation; or

- Restricts or limits the types of services that may be provided by an ETC or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by an ETC.

The bill also requires an ETC, with COLR obligations, to give timely notice to the PSC when the above circumstances exist and prevent or impede it from providing basic service to the occupants of a business or residential multitenant building or development.

Nothing in the bill affects the limitations on PSC jurisdiction imposed by s. 364.011 or s. 364.013, F.S.<sup>7</sup>

Two primary concerns have been raised about the intent of the bill:

1. As the term "communications service" is defined in the bill, an ETC, with COLR obligations, would be relieved of its obligations, if an owner or developer of a multitenant property arranges, for example, for a cable television carrier to provide service to its occupants. The problem occurs when the cable provider does not have the ability or intent to offer voice services to the occupants also. Under the criteria, the occupants could be without voice services or voice alternative service, i.e. VoIP, because the COLR has no obligation to serve those customer.
2. While the bill addresses an exemption to the ETC's obligation to provide basic service to an end-use customer in a multitenant environment, if the criteria exist, it does not address the ETC's responsibility to provide distribution facilities to locations where it has been relieved of its COLR obligation. PSC rules<sup>8</sup> provide for availability of service requirements, such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" The problem occurs when an owner or developer of a multitenant environment contracts with a telecommunications provider, not the ETC (LEC), for provision of telecommunications services, anticipating the availability of sufficient distribution facilities. However, the ETC (LEC) no longer would have an obligation to serve those end-use customers it is unclear whether sufficient distribution facilities or capacity to interconnect would exist.

#### C. SECTION DIRECTORY:

Section 1      Creates s. 364.025, F.S., related to carrier of last resort obligations for telecommunications carriers.

Section 2      This act shall take effect July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None

#### 2. Expenditures:

None

<sup>7</sup> Section 364.011, F.S., provides for exemptions from the PSC's jurisdiction and s. 364.013, provides that broadband and VoIP services are free from state regulation except as delineated in ch. 364, F.S., or in federal law.

<sup>8</sup> Rule 25-4.066, F.A.C.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may prevent COLR's from investing in facilities to multitenant locations where the owner or developer prevents them from providing service.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



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2006

A bill to be entitled

An act relating to telecommunications carriers of last resort; amending s. 364.025, F.S.; providing definitions; providing that a telecommunications company obligated to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to customers in a multitenant business or residential property under certain circumstances; requiring the telecommunications carrier to notify the commission when it is relieved of the obligation to provide service; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) is added to section 364.025, Florida Statutes, to read:

364.025 Universal service.--

(6)(a) For purposes of this subsection:

1. "Owner or developer" means the owner or developer of a multitenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.

2. "Communications service provider" means any person or entity providing communications services, any person or entity allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service

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29 providers for a property owner or developer.

30 3. "Communications service" means those services or  
31 combinations of services provided to customers in a multitenant  
32 business or residential property, including, but not limited to,  
33 voice telecommunications service or voice replacement service,  
34 VoIP, broadband service, data service, information service, and  
35 cable service.

36 (b) A telecommunications company that is designated as an  
37 eligible telecommunications carrier by the commission pursuant  
38 to 47 C.F.R. s. 54.201 and is otherwise obligated by this  
39 section to serve as the carrier of last resort is not obligated  
40 to provide basic local telecommunications service to any  
41 customers in a multitenant business or residential property,  
42 including, but not limited to, apartments, condominiums,  
43 subdivisions, office buildings, or office parks, when the owner  
44 or developer thereof:

45 1. Permits only one communications service provider to  
46 install its communications service-related facilities or  
47 equipment, to the exclusion of an eligible telecommunications  
48 carrier, during the construction phase of the property;

49 2. Accepts or agrees to accept incentives or rewards from  
50 a communications service provider that are contingent upon the  
51 provision of any or all communications services by one or more  
52 communications service providers to the exclusion of the  
53 eligible telecommunications carrier;

54 3. Collects from the occupants or residents of the  
55 property charges for the provision of any communications  
56 service, provided by a communications service provider other

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57 than the eligible telecommunications carrier, to the occupants  
 58 or residents in any manner, including, but not limited to,  
 59 collection through rent, fees, or dues;

60 4. Restricts or limits an eligible telecommunications  
 61 carrier's access to the property or enters into an agreement  
 62 with a communications service provider that restricts or limits  
 63 an eligible telecommunications carrier's access to the property  
 64 or that grants incentives or rewards to such owner or developer  
 65 contingent upon such restriction or limitation; or

66 5. Restricts or limits the types of services that may be  
 67 provided by an eligible telecommunications carrier or enters  
 68 into an agreement with a communications service provider which  
 69 restricts or limits the types of services that may be provided  
 70 by an eligible telecommunications carrier.

71 (c) If an eligible telecommunications carrier is relieved  
 72 of its carrier of last resort obligation to provide basic local  
 73 telecommunications service to the occupants or residents of a  
 74 multitenant business or residential property pursuant to  
 75 paragraph (a), the eligible telecommunications carrier shall  
 76 notify the commission of that fact in a timely manner.

77 (d) Nothing in this subsection affects the limitations on  
 78 commission jurisdiction imposed by s. 364.011 or s. 364.013.

79 Section 2. This act shall take effect July 1, 2006.

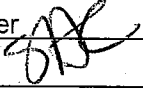
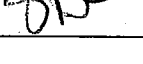
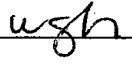


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 871 CS  
**SPONSOR(S):** Ryan and others  
**TIED BILLS:**

Telephone Calling Records

**IDEN./SIM. BILLS:** SB 1488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer 	Kramer
2) Utilities & Telecommunications Committee		Cater 	Holt 
3) Justice Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

There are a number of companies which offer telephone calling records for sale. Numerous websites offer to obtain detailed information regarding the numbers that have been called from a particular telephone number.

The bill makes it a first degree misdemeanor to:

- Obtain or attempt to obtain the calling record of another person without the permission of that person by:
  - Making a false, fictitious, or fraudulent statement or representation to an officer, employee or agent of a telecommunications company;
  - Making a false, fictitious or fraudulent statement or representation to a customer of a telecommunications company; or
  - Providing any document to an officer, employee or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious or fraudulent statement or representation.
- Ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in a manner described above.
- Sell or offer to sell a calling records obtained in any manner described above.

The bill contains exceptions to this prohibition. A second or subsequent violation of this section will be a third degree felony.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates a new criminal offense.

Promote personal responsibility: The bill makes it a crime to obtain a telephone calling record of another person by using fraudulent means.

#### B. EFFECT OF PROPOSED CHANGES:

There are a number of businesses which offer telephone calling records for sale. Numerous websites offer to obtain detailed information regarding the numbers that have been called by a particular telephone number. According to the Federal Trade Commission (FTC), records are obtained by "pretexting" – a practice where a person calls a telephone company pretending to be the account holder in order to gain access to the records from the company. Calling records are also illicitly obtained by unauthorized access of accounts via the internet.<sup>1</sup> According to the FTC, "[a]lthough the acquisition of telephone records does not present the opportunity for immediate financial harm as the acquisition of financial records does, it nonetheless is a serious intrusion into consumers' privacy and could result in stalking, harassment and embarrassment."<sup>2</sup>

Federal legislation has been filed entitled the "Consumer Telephone Records Protection Act of 2006".<sup>3</sup> This bill prohibits obtaining confidential phone records information from a telecommunications carrier without authorization from the customer by knowingly and intentionally: making false or fraudulent statements or representations to an employee or customer of a telecommunications carrier; providing false documentation to a telecommunications carrier knowing that the document is false; or accessing customer accounts of a telecommunications carrier via the internet. Each occurrence would be punishable by up to five years in prison. The bill also prohibits any person from knowingly selling confidential phone records from a telecommunications carrier without authorization from the customer.

Currently, section 817.568, F.S. makes it a third degree felony for any person to willfully and without authorization fraudulently use or possess with intent to use, personal identification information concerning an individual without first obtaining that individual's consent.

Part II of Chapter 501, Florida Statutes is known as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Section 501.204, F.S. provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive.<sup>4</sup> A person willfully violating the provisions of the FDUTPA is liable for a civil penalty of not more than \$10,000 per violation. This penalty is increased to \$15,000 for each violation if the willful violation victimizes or attempts to victimize senior citizens or handicapped persons. Individuals aggrieved by a violation of the act can seek a declaratory judgment that an act or practice violates the act and to enjoin a person from continuing the deceptive or unfair act. An individual harmed by a person who has violated the act may also seek actual damages from that person, plus attorney's fees and court costs.<sup>5</sup> The state attorneys and the Department of Legal Affairs

<sup>1</sup> Prepared Statement of the Federal Trade Commission before the Committee on Commerce, Science and Transportation, Subcommittee on Consumer Affairs, Product Safety and Insurance, U.S. Senate on Protecting Consumers' Phone Records, February 8, 2006. <http://www.ftc.gov/os/2006/02/commissiontestimonypretexting060208.pdf>

<sup>2</sup> *Id.* at 7.

<sup>3</sup> See S. 2178, sponsored by Senate Schumer.

<sup>4</sup> See s. 501.2075, F.S.

<sup>5</sup> See s. 501.211(1) and (2), F.S.

are the enforcing authorities for the FDUTPA. Section 501.207, F.S., specifies the actions that the enforcing authority may bring.

In January 2006, the Attorney General's office filed suit against a Florida corporation claiming that its actions in using personal identification information of a consumer without the consumer's consent in order to obtain calling records (which the company then sold) violated section 817.568, F.S. and was therefore a per se violation of FDUTPA.<sup>6</sup> According to the Attorney General's office, the company's website has since been shut down.

HB 871 makes it a first degree misdemeanor to:

1. Obtain or attempt to obtain the calling record of another person without the permission of that person by:
  - a. Making a false, fictitious, or fraudulent statement or representation to an officer, employee or agent of a telecommunications company;
  - b. Making a false, fictitious or fraudulent statement or representation to a customer of a telecommunications company; or
  - c. Providing any document to an officer, employee or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious or fraudulent statement or representation.
2. Ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in a manner described above.
3. Sell or offer to sell a calling records obtained in any manner described above.

A second or subsequent violation is a third degree felony. The bill defines the term "calling record" to mean a record held by a telecommunications company<sup>7</sup> of the telephone calls made or text messages sent or received by a customer<sup>8</sup> of that company.

The bill provides that it is not a violation of this section for:

1. A law enforcement agency<sup>9</sup> to obtain a calling record in connection with the performance of the official duties of that agency in accordance with other applicable laws.
2. A telecommunications company, or an officer, employee, or agent of the telecommunications company, to obtain a calling record of that company in the course of:
  - a. Testing the security procedures or systems of the telecommunications company for maintaining the confidentiality of customer information;
  - b. Investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent of the telecommunications company; or

<sup>6</sup> [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6L8KGC/\\$file/1stSource\\_Complaint.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6L8KGC/$file/1stSource_Complaint.pdf)

<sup>7</sup> The bill defines the term "telecommunications company" in conformity with s. 364.02, F.S. which defines the term as follow:  
"Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

- (a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company;
- (b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
- (c) A commercial mobile radio service provider;
- (d) A facsimile transmission service;
- (e) A private computer data network company not offering service to the public for hire;
- (f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or
- (g) An intrastate interexchange telecommunications company.

The bill also provides that the term includes providers of "VoIP service" (an acronym for voice-over-the internet-protocol) and commercial mobile radio service.

<sup>8</sup> The bill defines the term "customer" to mean a person who has received telephone service from a telecommunications company.

<sup>9</sup> The bill references the definition of the term "law enforcement agency" in s. 23.1225(1)(d), F.S.

- c. Recovering a calling record that was obtained or received by another person in a fraudulent manner, described above.

**C. SECTION DIRECTORY:**

Section 1. Prohibits obtaining calling records of another person.

Section 2. Provides effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has determined that this bill will have an insignificant prison bed impact on the Department of Corrections.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill would criminalize selling telephone calling records that are obtained through fraudulent means.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.



#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Criminal Justice Committee adopted a strike-all amendment which:

- Included commercial mobile radio service providers within the definition of the term "telecommunications company".
- Included records of text messages sent or received within the definition of the term "calling record".
- Removed exceptions which were contained in the original bill – one involving public records and one involving activities of private investigators.
- Added language to require proof that the phone records were obtained without the consent of the owner of the records.

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CHAMBER ACTION

The Criminal Justice Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to telephone calling records; providing definitions; prohibiting a person from obtaining or attempting to obtain the calling record of another person by making false or fraudulent statements or providing false or fraudulent documents to a telecommunications company or by selling or offering to sell a calling record that was obtained in a fraudulent manner; providing that it is a first-degree misdemeanor to commit a first violation and a third-degree felony to commit a second or subsequent violation; providing penalties; providing that it is not a violation of the act for a law enforcement agency or telecommunications company to obtain calling records for specified purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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23        Section 1. Obtaining telephone calling records by  
24 fraudulent means prohibited.--

25        (1) As used in this section, the term:

26        (a) "Calling record" means a record held by a  
27 telecommunications company of the telephone calls made or text  
28 messages sent or received by a customer of that company.

29        (b) "Customer" means a person who has received telephone  
30 service from a telecommunications company.

31        (c) "Law enforcement agency" has the same meaning as in s.  
32 23.1225(1)(d), Florida Statutes.

33        (d) "Telecommunications company" has the same meaning as  
34 in s. 364.02, Florida Statutes, except that the term includes  
35 VoIP service and commercial mobile radio service providers.

36        (2) It is a violation of this section for a person to:

37        (a) Obtain or attempt to obtain the calling record of  
38 another person without the permission of that person by:

39        1. Making a false, fictitious, or fraudulent statement or  
40 representation to an officer, employee, or agent of a  
41 telecommunications company;

42        2. Making a false, fictitious, or fraudulent statement or  
43 representation to a customer of a telecommunications company; or

44        3. Providing any document to an officer, employee, or  
45 agent of a telecommunications company, knowing that the document  
46 is forged, is counterfeit, was lost or stolen, was fraudulently  
47 obtained, or contains a false, fictitious, or fraudulent  
48 statement or representation.

49        (b) Ask another person to obtain a calling record, knowing  
50 that the other person will obtain, or attempt to obtain, the

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51 calling record from the telecommunications company in any manner  
52 described in paragraph (a).

53 (c) Sell or offer to sell a calling record obtained in any  
54 manner described in paragraph (a) or paragraph (b).

55 (3) A person who violates this section for the first time  
56 commits a misdemeanor of the first degree, punishable as  
57 provided in s. 775.082 or s. 775.083, Florida Statutes. A second  
58 or subsequent violation constitutes a felony of the third  
59 degree, punishable as provided in s. 775.082 or s. 775.083,  
60 Florida Statutes.

61 (4) It is not a violation of this section for:

62 (a) A law enforcement agency to obtain a calling record in  
63 connection with the performance of the official duties of that  
64 agency in accordance with other applicable laws.

65 (b) A telecommunications company, or an officer, employee,  
66 or agent of a telecommunications company, to obtain a calling  
67 record of that company in the course of:

68 1. Testing the security procedures or systems of the  
69 telecommunications company for maintaining the confidentiality  
70 of customer information;

71 2. Investigating an allegation of misconduct or negligence  
72 on the part of an officer, employee, or agent of the  
73 telecommunications company; or

74 3. Recovering a calling record that was obtained or  
75 received by another person in any manner described in subsection  
76 (2).

77 Section 2. This act shall take effect July 1, 2006.



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1 A bill to be entitled

2 An act relating to statewide cable television franchises;  
3 providing a short title; amending s. 202.24, F.S.;  
4 prohibiting counties and municipalities from negotiating  
5 terms and conditions relating to cable services; deleting  
6 authorization to negotiate; revising application to  
7 existing ordinances or franchise agreements; amending s.  
8 337.401, F.S.; deleting authorization for counties and  
9 municipalities to award cable service franchises and a  
10 restriction that cable service companies not operate  
11 without such a franchise; amending s. 337.4061, F.S.;  
12 revising definitions; creating ss. 610.102, 610.103,  
13 610.104, 610.105, 610.106, 610.107, 610.108, 610.109,  
14 610.110, 610.112, 610.113, 610.114, 610.115, and 610.116,  
15 F.S.; designating the Department of State as the  
16 authorizing authority; providing definitions; requiring  
17 state authorization to provide cable services; providing  
18 duties and responsibilities of the Department of State;  
19 providing application procedures and requirements;  
20 providing for issuing certificates of franchise authority;  
21 providing eligibility requirements and criteria for a  
22 certificate; prohibiting the department from imposing  
23 taxes, fees, or charges on a cable service provider to  
24 issue a certificate; prohibiting imposing buildout  
25 requirements on a certificateholder; imposing certain  
26 customer service requirements on cable service providers;  
27 requiring the Department of Agriculture and Consumer  
28 Services to receive customer service complaints; requiring

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CODING: Words stricken are deletions; words underlined are additions.

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29 provision of public, educational, and governmental access  
30 channels or capacity equivalent; providing criteria,  
31 requirements, and procedures; providing exceptions;  
32 providing responsibilities of municipalities and counties  
33 relating to such channels; providing for enforcement;  
34 providing requirements for and limitations on counties and  
35 municipalities relating to access to public right-of-way;  
36 prohibiting counties and municipalities from imposing  
37 additional requirements on certificateholders; authorizing  
38 counties and municipalities to require permits of  
39 certificateholders relating to public right-of-way;  
40 providing permit criteria and requirements; prohibiting  
41 discrimination between cable service subscribers;  
42 providing for enforcement; providing for determinations of  
43 violations; providing for enforcement of compliance by  
44 certificateholders; providing for applicability of other  
45 laws; providing severability; repealing s. 166.046, F.S.,  
46 relating to definitions and minimum standards for cable  
47 television franchises imposed upon counties and  
48 municipalities; amending ss. 350.81 and 364.0361, F.S.;  
49 removing cross-references to conform; providing an  
50 effective date.

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. This act may be cited as the "Consumer Choice  
55 Act of 2006."

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56 Section 2. Paragraphs (a) and (c) of subsection (2) of  
57 section 202.24, Florida Statutes, are amended to read:

58 202.24 Limitations on local taxes and fees imposed on  
59 dealers of communications services.--

60 (2)(a) Except as provided in paragraph (c), each public  
61 body is prohibited from:

62 1. Levying on or collecting from dealers or purchasers of  
63 communications services any tax, charge, fee, or other  
64 imposition on or with respect to the provision or purchase of  
65 communications services.

66 2. Requiring any dealer of communications services to  
67 enter into or extend the term of a franchise or other agreement  
68 that requires the payment of a tax, charge, fee, or other  
69 imposition.

70 3. Adopting or enforcing any provision of any ordinance or  
71 agreement to the extent that such provision obligates a dealer  
72 of communications services to charge, collect, or pay to the  
73 public body a tax, charge, fee, or other imposition.

74  
75 Municipalities and counties may not negotiate ~~Each municipality~~  
76 ~~and county retains authority to negotiate all terms and~~  
77 ~~conditions of a cable service franchise allowed by federal and~~  
78 ~~state law except these terms and conditions related to franchise~~  
79 ~~fees or and the definition of gross revenues or other~~  
80 ~~definitions or methodologies related to the payment or~~  
81 ~~assessment of franchise fees on providers of cable services.~~

82 (c) This subsection does not apply to:



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- 83           1. Local communications services taxes levied under this  
84 chapter.
- 85           2. Ad valorem taxes levied pursuant to chapter 200.
- 86           3. Occupational license taxes levied under chapter 205.
- 87           4. "911" service charges levied under chapter 365.
- 88           5. Amounts charged for the rental or other use of property  
89 owned by a public body which is not in the public rights-of-way  
90 to a dealer of communications services for any purpose,  
91 including, but not limited to, the placement or attachment of  
92 equipment used in the provision of communications services.
- 93           6. Permit fees of general applicability which are not  
94 related to placing or maintaining facilities in or on public  
95 roads or rights-of-way.
- 96           7. Permit fees related to placing or maintaining  
97 facilities in or on public roads or rights-of-way pursuant to s.  
98 337.401.
- 99           8. Any in-kind requirements, institutional networks, or  
100 contributions for, or in support of, the use or construction of  
101 public, educational, or governmental access facilities allowed  
102 under federal law and imposed on providers of cable service  
103 pursuant to any existing ordinance or an existing franchise  
104 agreement granted by each municipality or county, under which  
105 ordinance or franchise agreement service is provided prior to  
106 July 1, 2006. Nothing in this subparagraph shall prohibit the  
107 ability of providers of cable service to recover such expenses  
108 as allowed under federal law.
- 109           9. Special assessments and impact fees.

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110           10. Pole attachment fees that are charged by a local  
111 government for attachments to utility poles owned by the local  
112 government.

113           11. Utility service fees or other similar user fees for  
114 utility services.

115           12. Any other generally applicable tax, fee, charge, or  
116 imposition authorized by general law on July 1, 2000, which is  
117 not specifically prohibited by this subsection or included as a  
118 replaced revenue source in s. 202.20.

119           Section 3. Paragraphs (a), (e), and (f) of subsection (3)  
120 of section 337.401, Florida Statutes, are amended to read:

121           337.401 Use of right-of-way for utilities subject to  
122 regulation; permit; fees.--

123           (3)(a)~~1-~~ Because of the unique circumstances applicable to  
124 providers of communications services, including, but not limited  
125 to, the circumstances described in paragraph (e) and the fact  
126 that federal and state law require the nondiscriminatory  
127 treatment of providers of telecommunications services, and  
128 because of the desire to promote competition among providers of  
129 communications services, it is the intent of the Legislature  
130 that municipalities and counties treat providers of  
131 communications services in a nondiscriminatory and competitively  
132 neutral manner when imposing rules or regulations governing the  
133 placement or maintenance of communications facilities in the  
134 public roads or rights-of-way. Rules or regulations imposed by a  
135 municipality or county relating to providers of communications  
136 services placing or maintaining communications facilities in its  
137 roads or rights-of-way must be generally applicable to all

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138 providers of communications services and, notwithstanding any  
139 other law, may not require a provider of communications  
140 services, ~~except as otherwise provided in subparagraph 2.,~~ to  
141 apply for or enter into an individual license, franchise, or  
142 other agreement with the municipality or county as a condition  
143 of placing or maintaining communications facilities in its roads  
144 or rights-of-way. In addition to other reasonable rules or  
145 regulations that a municipality or county may adopt relating to  
146 the placement or maintenance of communications facilities in its  
147 roads or rights-of-way under this subsection, a municipality or  
148 county may require a provider of communications services that  
149 places or seeks to place facilities in its roads or rights-of-  
150 way to register with the municipality or county and to provide  
151 the name of the registrant; the name, address, and telephone  
152 number of a contact person for the registrant; the number of the  
153 registrant's current certificate of authorization issued by the  
154 Florida Public Service Commission, or the Federal Communications  
155 Commission, or the Florida Department of State; and proof of  
156 insurance or self-insuring status adequate to defend and cover  
157 claims.

158 ~~2. Notwithstanding the provisions of subparagraph 1., a~~  
159 ~~municipality or county may, as provided by 47 U.S.C. s. 541,~~  
160 ~~award one or more franchises within its jurisdiction for the~~  
161 ~~provision of cable service, and a provider of cable service~~  
162 ~~shall not provide cable service without such franchise. Each~~  
163 ~~municipality and county retains authority to negotiate all terms~~  
164 ~~and conditions of a cable service franchise allowed by federal~~  
165 ~~law and s. 166.046, except those terms and conditions related to~~

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~~franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees and permit fees as provided in paragraph (c) on providers of cable services. A municipality or county may exercise its right to require from providers of cable service in-kind requirements, including, but not limited to, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities to the extent permitted by federal law. A provider of cable service may exercise its right to recover any such expenses associated with such in-kind requirements, to the extent permitted by federal law.~~

(e) The authority of municipalities and counties to require franchise fees from providers of communications services, with respect to the provision of communications services, is specifically preempted by the state, ~~except as otherwise provided in subparagraph (a)2.,~~ because of unique circumstances applicable to providers of communications services when compared to other utilities occupying municipal or county roads or rights-of-way. Providers of communications services may provide similar services in a manner that requires the placement of facilities in municipal or county roads or rights-of-way or in a manner that does not require the placement of facilities in such roads or rights-of-way. Although similar communications services may be provided by different means, the state desires to treat providers of communications services in a nondiscriminatory manner and to have the taxes, franchise fees, and other fees paid by providers of communications services be

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194 competitively neutral. Municipalities and counties retain all  
195 existing authority, if any, to collect franchise fees from users  
196 or occupants of municipal or county roads or rights-of-way other  
197 than providers of communications services, and the provisions of  
198 this subsection shall have no effect upon this authority. The  
199 provisions of this subsection do not restrict the authority, if  
200 any, of municipalities or counties or other governmental  
201 entities to receive reasonable rental fees based on fair market  
202 value for the use of public lands and buildings on property  
203 outside the public roads or rights-of-way for the placement of  
204 communications antennas and towers.

205 (f) Except as expressly allowed or authorized by general  
206 law and except for the rights-of-way permit fees subject to  
207 paragraph (c), a municipality or county may not levy on a  
208 provider of communications services a tax, fee, or other charge  
209 or imposition for operating as a provider of communications  
210 services within the jurisdiction of the municipality or county  
211 which is in any way related to using its roads or rights-of-way.  
212 A municipality or county may not require or solicit in-kind  
213 compensation, except as otherwise provided in s. 202.24(2)(c)8.  
214 or s. 610.109 ~~subparagraph (a)2.~~ Nothing in this paragraph shall  
215 impair any ordinance or agreement in effect on May 22, 1998, or  
216 any voluntary agreement entered into subsequent to that date,  
217 which provides for or allows in-kind compensation by a  
218 telecommunications company.

219 Section 4. Section 337.4061, Florida Statutes, is amended  
220 to read:

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221           337.4061 Definitions; unlawful use of state-maintained  
 222 road right-of-way by nonfranchised cable ~~television~~ services.--  
 223           (1) As used in this section, the term:  
 224           (a) "Cable service" means:  
 225           1. The one-way transmission to subscribers of video  
 226 programming or any other programming service; and  
 227           2. Subscriber interaction, if any, which is required for  
 228 the selection of such video programming or other programming  
 229 service.  
 230           (b) "Cable system" means a facility, consisting of a set  
 231 of closed transmission paths and associated signal generation,  
 232 reception, and control equipment that is designed to provide  
 233 cable service which includes video programming and which is  
 234 provided to multiple subscribers within a community, but such  
 235 term does not include:  
 236           1. A facility that serves only to retransmit the  
 237 television signals of one or more television broadcast stations;  
 238           2. A facility that serves only subscribers in one or more  
 239 multiple-unit dwellings under common ownership, control, or  
 240 management, unless such facility or facilities use any public  
 241 right-of-way;  
 242           3. A facility that serves subscribers without using any  
 243 public right-of-way;  
 244           4.3. A facility of a common carrier that is subject, in  
 245 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,  
 246 except the specific bandwidths or wavelengths used by that such  
 247 facility shall be considered a cable system only to the extent  
 248 such bandwidths or wavelengths are ~~facility is~~ used in the

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249 transmission of video programming directly to subscribers,  
250 unless the extent of such use is solely to provide interactive  
251 on-demand services, in which case the use of such bandwidths or  
252 wavelengths is not a cable system; or

253 5.4. Any facilities of any electric utility used solely  
254 for operating its electric utility systems.

255 (c) "Franchise" means an initial authorization or renewal  
256 thereof issued by a franchising authority, whether such  
257 authorization is designated as a franchise, permit, license,  
258 resolution, contract, certificate, agreement, or otherwise,  
259 which authorizes the construction or operation of a cable  
260 system.

261 (d) "Franchising authority" means any governmental entity  
262 empowered by federal, state, or local law to grant a franchise.

263 (e) "Person" means an individual, partnership,  
264 association, joint stock company, trust, corporation, or  
265 governmental entity.

266 (f) "Video programming" means programming provided by or  
267 generally considered comparable to programming provided by a  
268 television broadcast station or cable system.

269 (2) It is unlawful to use the right-of-way of any state-  
270 maintained road, including appendages thereto, and also  
271 including, but not limited to, rest areas, wayside parks, boat-  
272 launching ramps, weigh stations, and scenic easements, to  
273 provide for cable service over a cable system ~~purposes~~ within a  
274 geographic area subject to a valid existing franchise for cable  
275 service, unless the cable system using such right-of-way holds a

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franchise from a franchise authority ~~the municipality or county~~  
for the area in which the right-of-way is located.

(3) A violation of this section shall be deemed a  
violation of s. 337.406.

Section 5. Sections 610.102, 610.103, 610.104, 610.105,  
610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113,  
610.114, 610.115, and 610.116, Florida Statutes, are created to  
read:

610.102 Department of State authority to issue statewide  
cable franchise.--The department shall be designated as the  
franchising authority, pursuant to 47 U.S.C. s. 522(10), for a  
state-issued franchise for the provision of cable service. A  
municipality or county may not grant a new franchise for the  
provision of cable service within its jurisdiction.

610.103 Definitions.--As used in ss. 610.102-610.115:

(1) "Cable service" means:

(a) The one-way transmission to subscribers of video  
programming or any other programming service.

(b) Subscriber interaction, if any, that is required for  
the selection of such video programming or other programming  
service.

(2) "Cable system" means a facility consisting of a set of  
closed transmission paths and associated signal generation,  
reception, and control equipment that is designed to provide  
cable service that includes video programming and that is  
provided to multiple subscribers within a community, but such  
term does not include:



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303        (a) A facility that serves only to retransmit the  
304        television signals of one or more television broadcast stations;

305        (b) A facility that serves only subscribers in one or more  
306        multiple-unit dwellings under common ownership, control, or  
307        management, unless such facility or facilities use any public  
308        right-of-way;

309        (c) A facility that serves subscribers without using any  
310        public right-of-way;

311        (d) A facility of a common carrier that is subject, in  
312        whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,  
313        except the specific bandwidths or wavelengths over such facility  
314        shall be considered a cable system only to the extent such  
315        bandwidths or wavelengths are used in the transmission of video  
316        programming directly to subscribers, unless the extent of such  
317        use is solely to provide interactive on-demand services, in  
318        which case it is not a cable system; or

319        (e) Any facilities of any electric utility used solely for  
320        operating its electric utility systems.

321        (3) "Cable service provider" means a person that provides  
322        cable service over a cable system.

323        (4) "Certificateholder" means a cable service provider  
324        that has been issued and holds a certificate of franchise  
325        authority from the department.

326        (5) "Department" means the Department of State.

327        (6) "Franchise" means an initial authorization or renewal  
328        of an authorization, regardless of whether the authorization is  
329        designated as a franchise, permit, license, resolution,

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330 contract, certificate, agreement, or otherwise, to construct and  
331 operate a cable system in the public right-of-way.

332 (7) "Franchise authority" means any governmental entity  
333 empowered by federal, state, or local law to grant a franchise.

334 (8) "Incumbent cable service provider" means the cable  
335 service provider serving the largest number of cable subscribers  
336 in a particular municipal or county franchise area on July 1,  
337 2006.

338 (9) "Public right-of-way" means the area on, below, or  
339 above a public roadway, highway, street, sidewalk, alley, or  
340 waterway, including, without limitation, a municipal, county,  
341 state, district, or other public roadway, highway, street,  
342 sidewalk, alley, or waterway.

343 (10) "Video programming" means programming provided by, or  
344 generally considered comparable to programming provided by, a  
345 television broadcast station as set forth in 47 U.S.C. s.  
346 522(20).

347 610.104 State authorization to provide cable service.--

348 (1) An entity or person seeking to provide cable service  
349 over a cable system in this state after July 1, 2006, shall file  
350 an application for a state-issued certificate of franchise  
351 authority with the department as required by this section. An  
352 entity providing cable service under an unexpired franchise  
353 agreement with a municipality or county as of July 1, 2006, is  
354 not subject to this subsection with respect to such municipality  
355 or county until the franchise agreement expires, except as  
356 provided by subsection (2) and s. 610.105(4). An entity  
357 providing cable service may seek authorization from the

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358 department to provide service in areas where the entity  
359 currently does not have an existing franchise agreement as of  
360 July 1, 2006.

361 (2) Beginning 90 days after July 1, 2006, a cable service  
362 provider that is not an incumbent cable service provider and  
363 provides cable service to less than 40 percent of the total  
364 cable service subscribers in a particular franchise area may  
365 elect to terminate an existing municipal or county franchise and  
366 seek a state-issued certificate of franchise authority by  
367 providing written notice to the Secretary of State and the  
368 affected municipality or county not later than 180 days after  
369 July 1, 2006. The municipal or county franchise is terminated on  
370 the date the department issues the state-issued certificate of  
371 franchise authority.

372 (3) Before the 10th business day after an applicant  
373 submits the affidavit, the department shall notify the applicant  
374 for a state-issued certificate of franchise authority whether  
375 the applicant's affidavit described by subsection (4) is  
376 complete. If the department denies the application, the  
377 department must specify with particularity the reasons for the  
378 denial and permit the applicant to amend the application to cure  
379 any deficiency. The department shall act upon such amended  
380 application within 5 business days.

381 (4) The department shall issue a certificate of franchise  
382 authority to offer cable service before the 15th business day  
383 after receipt of a completed affidavit submitted by an applicant  
384 and signed by an officer or general partner of the applicant  
385 affirming:

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386        (a) That the applicant has filed or will timely file with  
387 the Federal Communications Commission all forms required by that  
388 agency in advance of offering cable service in this state.

389        (b) That the applicant agrees to comply with all  
390 applicable federal and state laws and regulations, to the extent  
391 that such state laws and rules are not in conflict with or  
392 superseded by the provisions of this chapter or other applicable  
393 state law.

394        (c) That the applicant agrees to comply with all lawful  
395 state laws and rules and municipal and county ordinances and  
396 regulations regarding the placement and maintenance of  
397 communications facilities in the public right-of-way that are  
398 generally applicable to providers of communications services in  
399 accordance with s. 337.401.

400        (d) A description of the service area for which the  
401 applicant seeks certificate of franchise authority, which need  
402 not be coextensive with municipal, county, or other political  
403 boundaries.

404        (e) The location of the applicant's principal place of  
405 business and the names of the applicant's principal executive  
406 officers.

407        (5) If the department fails to act on the application  
408 within 15 business days after receiving the application, the  
409 application shall be deemed granted by the department without  
410 further action.

411        (6) The certificate of franchise authority issued by the  
412 department shall contain:

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413        (a) A grant of authority to provide cable service over a  
414 cable system as requested in the application.

415        (b) A grant of authority to construct, maintain, and  
416 operate facilities through, upon, over, and under any public  
417 right-of-way or waters.

418        (c) A statement that the grant of authority is subject to  
419 lawful operation of the cable system to provide cable service by  
420 the applicant or its successor in interest.

421        (7) A certificateholder that seeks to include additional  
422 service areas in its current certificate shall file notice with  
423 the department that reflects the new service area or areas to be  
424 served.

425        (8) The certificate of franchise authority issued by the  
426 department is fully transferable to any successor in interest to  
427 the applicant to which the certificate is initially granted. A  
428 notice of transfer shall be filed with the department and the  
429 relevant municipality or county within 14 business days  
430 following the completion of such transfer.

431        (9) The certificate of franchise authority issued by the  
432 department may be terminated by the cable service provider by  
433 submitting notice to the department.

434        (10) An applicant may challenge a denial of an application  
435 by the department in a court of competent jurisdiction through a  
436 petition for mandamus.

437        610.105 Eligibility for state-issued franchise.--

438        (1) Except as provided in s. 610.104(1) and (2) and  
439 subsection (4), a cable service provider that has an existing,  
440 unexpired franchise to provide cable service with respect to a

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441 municipality or county as of July 1, 2006, is not eligible to  
442 seek a state-issued certificate of franchise authority under  
443 this chapter as to that municipality or county until the  
444 expiration date of the existing franchise agreement.

445 (2) For purposes of this section, a cable service provider  
446 will be deemed to have or have had a franchise to provide cable  
447 service in a specific municipality or county if any affiliate or  
448 successor entity of the cable service provider has or had a  
449 franchise agreement granted by that specific municipality or  
450 county.

451 (3) The term "affiliate or successor entity" in this  
452 section refers to an entity receiving, obtaining, or operating  
453 under a franchise that directly or indirectly owns or controls,  
454 is owned or controlled by, or is under common ownership or  
455 control with the cable service provider.

456 (4) Notwithstanding subsection (1), a cable service  
457 provider may elect to terminate an existing municipal or county  
458 franchise and seek a state-issued certificate of franchise  
459 authority with respect to such municipality or county if another  
460 cable service provider is granted a state-issued certificate of  
461 franchise authority for a service area that encompasses at least  
462 50 percent of the total households within the service area  
463 covered by the existing municipal or county franchise. The cable  
464 service provider may terminate its existing franchise under this  
465 subsection by providing written notice to the Secretary of State  
466 and the affected municipality or county within 180 days  
467 following the issuance of the state-issued certificate of  
468 franchise authority to the nonincumbent cable service provider.

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469 The municipal or county franchise is terminated on the date the  
470 department issues the state-issued certificate of franchise  
471 authority with respect to such municipality or county to the  
472 cable service provider.

473 610.106 Franchise fee prohibited.--The department may not  
474 impose any taxes, fees, charges, or other impositions on a cable  
475 service provider as a condition for the issuance of a state-  
476 issued certificate of franchise authority. No municipality or  
477 county may impose any taxes, fees, charges, or other exactions  
478 on certificateholders in connection with use of public right-of-  
479 way as a condition of a certificateholder doing business in the  
480 municipality or county, or otherwise, except such taxes, fees,  
481 charges, or other exactions permitted by chapter 202 and s.  
482 337.401(6).

483 610.107 Buildout.--No franchising authority, state agency,  
484 or political subdivision may impose any buildout requirements on  
485 a certificateholder.

486 610.108 Customer service standards.--An incumbent cable  
487 service provider shall comply with customer service requirements  
488 reasonably comparable to the standards in 47 C.F.R. s. 76.309(c)  
489 until there are two or more providers offering service,  
490 excluding direct-to-home satellite service, in the relevant  
491 service area. The Department of Agriculture and Consumer  
492 Services shall receive service quality complaints from customers  
493 of a certificateholder.

494 610.109 Public, educational, and governmental access  
495 channels.--

496       (1) A certificateholder, not later than 180 days following  
497 a request by a municipality or county within whose jurisdiction  
498 the certificateholder is providing cable service, shall  
499 designate a sufficient amount of capacity on its network to  
500 allow the provision of public, educational, and governmental  
501 access channels for noncommercial programming as set forth in  
502 this section.

503       (2) A certificateholder shall designate a sufficient  
504 amount of capacity on its network to allow the provision of a  
505 comparable number of public, educational, and governmental  
506 access channels or capacity equivalent that a municipality or  
507 county has activated under the incumbent cable service  
508 provider's franchise agreement as of July 1, 2006. For the  
509 purposes of this section, a public, educational, or governmental  
510 channel is deemed activated if the channel is being used for  
511 public, educational, or governmental programming within the  
512 municipality for at least 10 hours per day.

513       (3) If a municipality or county did not have public,  
514 educational, or governmental access channels activated under the  
515 incumbent cable service provider's franchise agreement as of  
516 July 1, 2006, not later than 180 days following a request by the  
517 municipality or county within whose jurisdiction a  
518 certificateholder is providing cable service, the cable service  
519 provider shall furnish:

520       (a) Up to three public, educational, or governmental  
521 channels or capacity equivalent for a municipality or county  
522 with a population of at least 50,000.



523        (b) Up to two public, educational, or governmental  
524 channels or capacity equivalent for a municipality or county  
525 with a population of less than 50,000.

526        (4) Any public, educational, or governmental channel  
527 provided pursuant to this section that is not used by the  
528 municipality or county for at least 10 hours a day shall no  
529 longer be made available to the municipality or county but may  
530 be programmed at the cable service provider's discretion. At  
531 such time as the municipality or county can certify to the cable  
532 service provider a schedule for at least 10 hours of daily  
533 programming, the cable service provider shall restore the  
534 previously lost channel but shall be under no obligation to  
535 carry that channel on a basic or analog tier.

536        (5) If a municipality or county has not used the number of  
537 access channels or capacity equivalent permitted by subsection  
538 (3), access to the additional channels or capacity equivalent  
539 allowed in subsection (3) shall be provided upon 180 days'  
540 written notice if the municipality or county meets the following  
541 standard: if a municipality or county has one active public,  
542 educational, or governmental channel and wishes to activate an  
543 additional public, educational, or governmental channel, the  
544 initial channel shall be considered to be substantially used  
545 when 12 hours are programmed on that channel each calendar day.  
546 In addition, at least 40 percent of the 12 hours of programming  
547 for each business day on average over each calendar quarter must  
548 be nonrepeat programming. Nonrepeat programming shall include  
549 the first three videocastings of a program. If a municipality or  
550 county is entitled to three public, educational, or governmental

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551 channels under subsection (3) and has in service two active  
552 public, educational, or governmental channels, each of the two  
553 active channels shall be considered to be substantially used  
554 when 12 hours are programmed on each channel each calendar day  
555 and at least 50 percent of the 12 hours of programming for each  
556 business day on average over each calendar quarter is nonrepeat  
557 programming for three consecutive calendar quarters.

558 (6) The operation of any public, educational, or  
559 governmental access channel or capacity equivalent provided  
560 under this section shall be the responsibility of the  
561 municipality or county receiving the benefit of such channel or  
562 capacity equivalent, and a certificateholder bears only the  
563 responsibility for the transmission of such channel content. A  
564 certificateholder shall be responsible for providing the  
565 connectivity to each public, educational, or governmental access  
566 channel distribution point up to the first 200 feet.

567 (7) The municipality or county shall ensure that all  
568 transmissions, content, or programming to be transmitted over a  
569 channel or facility by a certificateholder are provided or  
570 submitted to the cable service provider in a manner or form that  
571 is capable of being accepted and transmitted by a provider  
572 without any requirement for additional alteration or change in  
573 the content by the provider, over the particular network of the  
574 cable service provider, which is compatible with the technology  
575 or protocol utilized by the cable service provider to deliver  
576 services. The provision of public, educational, or governmental  
577 content to the provider constitutes authorization for the  
578 provider to carry such content, including, at the provider's

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option, authorization to carry the content beyond the jurisdictional boundaries of the municipality or county.

(8) Where technically feasible, a certificateholder and an incumbent cable service provider shall use reasonable efforts to interconnect their cable systems for the purpose of providing public, educational, and governmental programming.

Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection.

Certificateholders and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of public, educational, and governmental channels.

(9) A certificateholder is not required to interconnect for, or otherwise to transmit, public, educational, and governmental content that is branded with the logo, name, or other identifying marks of another cable service provider, and a municipality or county may require a cable service provider to remove its logo, name, or other identifying marks from public, educational, and governmental content that is to be made available to another provider.

(10) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

610.110 Nondiscrimination by municipality or county.--

(1) A municipality or county shall allow a certificateholder to install, construct, and maintain a network within a public right-of-way and shall provide a certificateholder with open, comparable, nondiscriminatory, and

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competitively neutral access to the public right-of-way in  
accordance with the provisions of s. 337.401. All use of a  
public right-of-way by a certificateholder is nonexclusive.

(2) A municipality or county may not discriminate against  
a certificateholder regarding:

(a) The authorization or placement of a network in a  
public right-of-way;

(b) Access to a building or other property; or

(c) Utility pole attachment terms.

610.112 Limitation on local authority.--

(1) A municipality or county may not impose additional  
requirements on a certificateholder, including, but not limited  
to, financial, operational, and administrative requirements,  
except as expressly permitted by this chapter. A municipality or  
county may not impose on activities of a certificateholder a  
requirement:

(a) That particular business offices be located in the  
municipality or county;

(b) Regarding the filing of reports and documents with the  
municipality or county that are not required by state or federal  
law and that are not related to the use of the public right-of-  
way. Reports and documents other than schematics indicating the  
location of facilities for a specific site that are provided in  
the normal course of the municipality's or county's permitting  
process, that are authorized by s. 337.401 for communications  
services providers, or that are otherwise required in the normal  
course of such permitting process shall not be considered  
related to the use of the public right-of-way for communications

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635 services providers. A municipality or county may not request  
636 information concerning the capacity or technical configuration  
637 of a certificateholder's facilities;

638 (c) For the inspection of a certificateholder's business  
639 records; or

640 (d) For the approval of transfers of ownership or control  
641 of a certificateholder's business, except a municipality or  
642 county may require a certificateholder to provide notice of a  
643 transfer within a reasonable time.

644 (2) Notwithstanding any other provision of law, a  
645 municipality or county may require the issuance of a permit in  
646 accordance with and subject to s. 337.401 to a certificateholder  
647 that is placing and maintaining facilities in or on a public  
648 right-of-way in the municipality or county. In accordance with  
649 s. 337.402, the permit may require the permitholder to be  
650 responsible, at the permitholder's expense, for any damage  
651 resulting from the issuance of such permit and for restoring the  
652 public right-of-way to a substantially similar condition to that  
653 of the public right-of-way before installation of such  
654 facilities. The terms of the permit shall be consistent with  
655 construction permits issued to other providers of communications  
656 services placing or maintaining communications facilities in a  
657 public right-of-way.

658 610.113 Discrimination prohibited.--

659 (1) The purpose of this section is to prevent  
660 discrimination among potential residential subscribers.

661 (2) Pursuant to 47 U.S.C. s. 541(a)(3), a  
662 certificateholder may not deny access to service to any group of

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663 potential residential subscribers because of the income of the  
664 residents in the local area in which such group resides.

665 (3) An affected person may seek enforcement of the  
666 requirements provided by subsection (2) by initiating a  
667 proceeding with the Department of Agriculture and Consumer  
668 Services pursuant to s. 570.544.

669 (4) For purposes of determining whether a  
670 certificateholder has violated subsection (2), cost, density,  
671 distance, and technological or commercial limitations shall be  
672 taken into account, and the certificateholder shall have a  
673 reasonable time to deploy service pursuant to 47 U.S.C. s.  
674 541(a)(4)(A). Use of an alternative technology that provides  
675 comparable content, service, and functionality may not be  
676 considered a violation of subsection (2). The inability to serve  
677 an end user because a certificateholder is prohibited from  
678 placing its own facilities in a building or property is not a  
679 violation of subsection (2). This section may not be construed  
680 to authorize any buildout requirements on a certificateholder.

681 610.114 Compliance.--If a certificateholder is found by a  
682 court of competent jurisdiction to not comply with the  
683 requirements of this chapter, the certificateholder shall have a  
684 reasonable period of time, as specified by the court, to cure  
685 such noncompliance.

686 610.115 Applicability of other laws.--Nothing in this  
687 chapter impairs the right of a provider of video programming  
688 that is not a cable service provider to provide video  
689 programming and use public right-of-way under chapter 337  
690 without a state-issued certificate of franchise authority.

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691        610.116 Severability.--If any provision of ss. 610.102-  
692        610.115 or the application thereof to any person or circumstance  
693        is held invalid, such invalidity shall not affect other  
694        provisions or application of ss. 610.102-610.115 that can be  
695        given effect without the invalid provision or application, and  
696        to this end the provisions of ss. 610.102-610.115 are severable.

697        Section 6. Section 166.046, Florida Statutes, is repealed.

698        Section 7. Paragraph (a) of subsection (3) of section  
699        350.81, Florida Statutes, is amended to read:

700        350.81 Communications services offered by governmental  
701        entities.--

702        (3)(a) A governmental entity that provides a cable service  
703        shall comply with the Cable Communications Policy Act of 1984,  
704        47 U.S.C. ss. 521 et seq., the regulations issued by the Federal  
705        Communications Commission under the Cable Communications Policy  
706        Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state  
707        and federal rules and regulations, including, but not limited  
708        to, ~~ss. 166.046~~ and those provisions of chapters 202, 212, and  
709        337, and 610 which apply to a provider of the services.

710        Section 8. Section 364.0361, Florida Statutes, is amended  
711        to read:

712        364.0361 Local government authority; nondiscriminatory  
713        exercise.--A local government shall treat each  
714        telecommunications company in a nondiscriminatory manner when  
715        exercising its authority to grant franchises to a  
716        telecommunications company or to otherwise establish conditions  
717        or compensation for the use of rights-of-way or other public  
718        property by a telecommunications company. A local government may

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719 not directly or indirectly regulate the terms and conditions,  
720 including, but not limited to, the operating systems,  
721 qualifications, services, service quality, service territory,  
722 and prices, applicable to or in connection with the provision of  
723 any voice-over-Internet protocol, regardless of the platform,  
724 provider, or protocol, broadband or information service. This  
725 section does not relieve a provider from any obligations under  
726 ~~s. 166.046~~ or s. 337.401.

727       Section 9. This act shall take effect July 1, 2006.